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CORPORATION, ACCSTATION INC.,
ITRIMMING INC., and
EVERYDAYSOURCE INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

APPLE INC., a California corporation,

Plaintiff,

v.

EFORCITY CORPORATION, a
California corporation; ACCSTATION
INC., a California corporation;
ITRIMMING INC., a California
corporation; EVERYDAYSOURCE
INC., a California corporation;
UNITED INTEGRAL INC., a
California corporation;
CRAZYONDIGITAL, INC., a
California corporation; and
BOXWAVE CORPORATION, a
Nevada corporation; and DOES 1
through 20, inclusive,

Defendants.

CASE NO. CV 10-03216 JF

Honorable Jeremy Fogel

**DEFENDANTS EFORCITY
CORPORATION, ACCSTATION
INC., ITRIMMING INC. AND
EVERYDAYSOURCE INC'S
NOTICE OF AND MOTION TO
DISMISS CLAIMS FOR RELIEF 1-
10 OF PLAINTIFF'S COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

DATE: March 18, 2011

TIME: 9:00 a.m.

PLACE: Courtroom 3

TRIAL DATE: None Set

1 **TO ALL PARTIES, AND ALL COUNSEL OF RECORD HEREIN:**

2 **PLEASE TAKE NOTICE** that on Friday, March 18, 2010, at 9:00 a.m. in
3 Courtroom 3 of the United States District Court for the Northern District of California,
4 San Jose Division, Defendants EFORCITY CORPORATION, ACCSTATION INC.,
5 ITRIMMING INC. and EVERYDAYSOURCE INC. (collectively, "the eForCity
6 Defendants"), will move and hereby do move the court for an order dismissing Claims
7 For Relief 1-10 of Plaintiff's Complaint:

8 This motion is made on the grounds that Plaintiff, APPLE INC. ("Apple") has
9 failed to adequately plead Claims For Relief 1-10, as a matter of law pursuant to Rules
10 12(b)(6), 8 Federal Rules of Civil Procedure and controlling case law.

11 This motion will be based on the Notice, the attached Memorandum of Points
12 and Authorities, the pleadings and records on file and such oral and documentary
13 evidence as may be presented at the time of the hearing.

14
15 DATED: January 12, 2011

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18 By: /s/ Jon E. Hokanson
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20 Attorneys for Defendants EFORCITY
21 CORPORATION, ACCSTATION INC.,
22 ITRIMMING INC. AND
23 EVERYDAYSOURCE INC.
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MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO DISMISS CLAIMS FOR RELIEF 1-10

I. INTRODUCTION AND STATEMENT OF FACTS

On July 22, 2010, Apple, Inc. ("Apple"), filed a Complaint for patent infringement, trademark infringement and unfair competition against seven entities including eForCity Corporation, Accstation Inc., Itrimming Inc., Everydaysource Inc., (collectively the "eForCity Defendants"), United Integral Inc., Crazyondigital Inc. and Boxwave Corporation (all seven entities collectively, "Defendants"). Apple distributes and sells three products under the marks, iPad®, iPhone® and iPod™ ("Apple's Products"). Apple alleges that the Defendants have distributed or sold various accessory devices to Apple's Products without Apple's authorization, thus infringing several of its intellectual property rights, including seven utility patents, three design patents, and two trademarks.

Apple's Complaint alleges twelve Claims For Relief. Claims For Relief 1-10 allege infringement of United States patents. Complaint, ¶¶ 31-80.

Pursuant to Federal Rules of Civil Procedure 12(b)(6), the eForCity Defendants move to dismiss the patent Claims For Relief, i.e., claims 1-10 asserted by Apple against them¹ because Apple has failed to adequately plead those claims under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. ___, 129 S.Ct. 1937 (2009).

While each of the asserted utility patents has numerous claims, Apple's First through Seventh Claims for Relief assert infringement of only a single claim and then attempt to reserve rights to later allege infringement of additional claims. Thus, for

¹ Claims For Relief 1-9 have been asserted against all four of the eForCity Defendants; Claim For Relief 10 has been asserted against three of the eForCity Defendants (EFORCITY CORPORATION, ACCSTATION INC. and ITRIMMING INC.).

example in regard to the First Claim For Relief, Apple contends that the eForCity Defendants infringe “at least claim 9 of the ’343 patent” through the manufacture, use, sale, importation and/or offer for sale of various accessories. *See* Complaint, ¶ 33 (“First Claim”). The use of “at least” threatens that Apple will assert infringement of additional unnamed claims of the ’343 patent, unless, of course, the eForCity Defendants settle with Apple under this threat. Not only has Apple left the door open to add different infringement claims, but has also provided no explanation of the invention claimed in the ’343 patent (as compared to the numerous inventions disclosed in the patent specification) other than listing the title of that patent. Also, Apple fails to explain how or why any of the eForCity Defendants infringe any claim of the ’343 patent. *See id.*, ¶ 32. There is no comparison in Apple’s complaint between the “Media Player System” claimed in any claim of the ’343 patent and the accused eForCity products, which are cables, chargers, cradles, transmitters, speaker systems, back-up batteries and AV adapters. *See id.*, ¶¶ 23-26.

Similarly, the Second through Seventh Claims for Relief fail to provide sufficient notice of infringement. For convenience the following table lists for each of the seven utility patents identified in the Complaint the total number of claims in the patent and the claim number of the single claim asserted.

Utility Patent Number	Total Number of Claims	The Claim Number of the Single Asserted Claim
7,627,343	34	9
7,305,506	30	1
7,587,540	28	1
7,590,783	38	1
7,529,870	40	29
7,529,872	54	1
7,580,255	6	1

1 Grand Totals 230 claims in the 7 claims asserted
 2 asserted patents
 3

4 Thus, Apple has alleged infringement of 7 claims, has threatened infringement of an
 5 additional 223 claims, but apparently has not made any reasonable inquiry on whether
 6 any of these other 223 claims are believed to be infringed.

7 The allegations of infringement of the three design patents against the eForCity
 8 Defendants are similarly vague. With respect to the '545 patent, Apple alleges that the
 9 eForCity Defendants manufacture, use, sell, offer for sale, or import "unlicensed
 10 iPod®, iPhone® and/or iPad™ accessories including but not limited to . . . [the
 11 eForCity Defendants' products] . . . CAPPIPODAT4, DAPPIPODDA15, and
 12 DAPPIPODDAT3" Complaint, ¶ 68. Yet Apple provides no description of the design
 13 claimed in the '545 patent save the title of that alleged "invention": "Connectors." *Id.*,
 14 ¶ 67. Similarly, with respect to the '621 patent, Apple alleges that the eForCity
 15 Defendants manufacture, use, sell, offer for sale, or import the following products:
 16 "DAPPIPODCR10, DAPPIPODCR11, and DAPPIPODCR12." Complaint, ¶ 73.
 17 Consistent with its failure to describe the design claimed in the '545 patent, Apple
 18 provides no description of the design claimed in the '621 patent save the title: "Docking
 19 Station." *Id.*, ¶ 72. Finally, with respect to the '110 patent, Apple alleges that the
 20 eForCity Defendants manufacture, use, sell, offer for sale, or import the following
 21 products: "DAPPIPODCR10 and DAPPIPODCR11" Complaint, ¶ 78. Consistent with
 22 its failures to describe the design claimed in the '545 and '621 patents, Apple provides
 23 no description of the design claimed in the '110 patent save the title: "Docking
 24 Station." *Id.*, ¶ 77.

25 The Court should dismiss Apple's First through Tenth Claims For Relief against
 26 the eForCity Defendants because Apple's Complaint fails to provide adequate
 27 specificity showing grounds for relief for each of these Claims For Relief asserted
 28 against the eForCity Defendants.

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II. ARGUMENT: APPLE'S PATENT INFRINGEMENT CLAIMS AGAINST THE EFORCITY DEFENDANTS SHOULD BE DISMISSED FOR FAILURE TO ADEQUATELY PLEAD THOSE CLAIMS

A complaint may be dismissed pursuant to Rule 12(b) (6) either where the complaint "lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). A plaintiff must provide sufficient detail to allow a defendant to understand the claim asserted against it so that it can prepare its defense: "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 570). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* (citing *Twombly*, 550 U.S. at 555). A plaintiff must "provide the 'grounds' of his 'entitle[ment] to relief.'" *Twombly*, 550 U.S. at 555 (citations omitted).

While the eForCity Defendants are mindful of the Local Rule 3-1 provision that permits a party claiming patent infringement to have up to 14 days after the Initial Case Management Conference to identify "[e]ach claim of each patent in suit that is allegedly infringed by each opposing party . . .", it appears that a different, more stringent standard is required under the authority of Rule 11, Federal Rules of Civil Procedure and the United States Court of Appeals for the Federal Circuit. That standard requires "an inquiry reasonable under the circumstances". As applied specifically to claims of patent infringement, the Federal Circuit requires that before filing a complaint for patent infringement the patentee's attorney is required to:

- Independently conduct a non-frivolous interpretation of the pertinent patent claims; and,
- Independently compare the accused device with the construed patent claims to make a "reasonable" effort" to determine whether the accused device satisfies each of the claim limitations.

1 *See, View Eng'g., Inc. v. Robotic Vision Systems, Inc.* 208 F.3d 981, 986 (Fed. Cir.
 2 2000). Due to the particular circumstances of this case, the more stringent standard of
 3 Rule 11 and *View Eng'g* should be applied here. In *View Eng'g.*, the accused device, as
 4 a practical matter was not available for inspection by the patentee's attorneys.
 5 However, the patentee's attorneys had four months after a declaratory judgment action
 6 was filed against their client to conduct a reasonable inquiry into the infringement issue
 7 prior to filing a counterclaim for patent infringement. In *View Eng'g.*, the district court
 8 determined, and the Federal Circuit affirmed that under those circumstances the
 9 patentee's attorneys failed to conduct a reasonable inquiry. Here, long before Apple's
 10 attorneys filed the complaint for infringement, all of the eForCity Defendants' accused
 11 products were available for purchase via the Internet, all are fairly simple devices, all
 12 are relatively cheap, and in light of Apple's and their attorney's well-know
 13 sophistication in patent matters, all could have readily been evaluated for infringement
 14 of each and every claim of each of the asserted patents. Furthermore, as will be shown
 15 with citations to recent authority below, Apple has failed to meet its pleading burden in
 16 a patent case and its complaint should therefore be dismissed.

17 **A. Apple Failed to Adequately Plead a Claim of Infringement of the**
 18 **Utility Patents.**

19 District courts have applied *Iqbal* and *Twombly* and dismissed complaints that
 20 failed to provide sufficient allegations of infringement of a utility patent. For example,
 21 in *Interval Licensing LLC v. AOL, Inc.*, the Court applied *Iqbal* and *Twombly* and
 22 dismissed claims of patent infringement, finding that the claims asserted were "too
 23 generic." 2010 WL 5058620 at *3 (W.D. Wash. 2010). The *Interval Licensing* Court
 24 concluded that "Plaintiff's complaint is little more than labels and conclusions, which
 25 are inadequate under *Twombly*, *Iqbal*, and even Form 18." *Id.* Similarly, in *Bender v.*
 26 *LG Electronics U.S.A., Inc.*, the Court dismissed a claim of patent infringement because
 27 the plaintiff failed to provide more than just a general list of product types that might be
 28 alleged to infringe the patent-in-suit. 2010 WL 889541 *3-*4 (N.D. Cal. 2010). After

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analyzing conflicting case law, the *Bender* Court concluded that the plaintiff “must do more than allege conclusorily the means by which Defendants are infringing on [the patent-in-suit] and provide fair notice to Defendants of the *specific infringements* alleged.” *Id.* at *6 (emphasis added). Such fair notice should include “at a minimum, a brief description of what the patent at issue does, and an allegation that certain named and specifically identified products or product components also do what the patent does, thereby raising a plausible claim that the named products are infringing.” *Id.*; see also *Elan Microelectronics Corp. v. Apple, Inc.*, 2009 WL 2972374 (N.D. Cal. 2009) (dismissing Apple’s patent infringement counterclaims under *Iqbal* and *Twombly* because the counterclaims were “conclusory”).

In its complaint, Apple failed to provide adequate specificity to provide the eForCity Defendants with fair notice of the specific infringements alleged. Other than quoting the title of the ’343 patent—“Media Player System”—Apple provides no explanation of the inventions described or claimed in that patent. Complaint, ¶ 32. Moreover, while Apple provides a list of accused products, see Complaint, ¶ 29, it fails to either identify specific claims of the ’343 patent (other than claim 9) that it alleges are infringed, and it fails to explain why any claim of the ’343 patent is allegedly infringed. Based on the title “Media Player System”—which is the only description in Apple’s Complaint it is impossible to determine from Apple’s Complaint why or how the accused products identified in paragraph 29 of the Complaint—[JH to get more details] cables, chargers, and cradles—supposedly infringe upon Apple’s rights. Moreover, it is fundamentally unfair for Apple to allege infringement, but then fail to explain its allegations in sufficient detail to allow the eForCity Defendants to answer.

For all of the above reasons Apple’s First through Seventh Claims for Relief should be dismissed under Rules 8 and 12(b)(6) pursuant to *Twombly* and *Iqbal*. See *Interval Licensing*, 2010 WL 5058620 at *3-*5 (citing *Iqbal* and *Twombly* and concluding that “generic” infringement allegations “are insufficient to put Defendants on ‘notice as to what [they] must defend.’”); *Bender*, 2010 WL 889541 *3-*4

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(concluding that “conclusory” infringement allegation “fails to provide a ‘plausible claim for relief’ under *Twombly* and *Iqbal*”); *Elan*, 2009 WL 2972374 at *2 (concluding “that the three challenged counterclaims [asserted by Apple] do not comply with Rule 8, under the standards enunciated in *Twombly* and *Iqbal*”).).

B. Apple Failed to Adequately Plead Claims for Infringement of the Design Patents.

Both *Iqbal* and *Twombly* also apply to the sufficiency of allegations of design patent infringement. In *Johnson v. Levi Strauss*, the Court dismissed claims of design patent infringement because those claims failed to meet the requisite standard by failing to describe the patented design and where the design was found in the accused products. 2009 WL 3600328 at *7 (S.D. Ohio 2009). “Without more specific descriptions of his patented design or ornamentation and without a more specific description of Defendants’ clothing lines or how Defendants’ clothing infringe Johnson’s Design Patent, the Complaint fails to raise a plausible claim of design patent infringement.” *Id.* The Court concluded that the allegations were sufficient to meet the *Twombly* standard for pleading. *Id.*

Like the allegations at issue in the *Johnson* case, Apple’s allegations of design patent infringement fail to provide the requisite specificity in this case. Other than the titles of the ’545, ’621 and ’110 patents, Apple’s Complaint provides no description of the design claimed in those design patents. *See* Complaint, ¶¶ 67, 72, 77. Further, the Complaint lacks any description of the accused cables and docking stations or how those products allegedly infringe the ’545, ’621 and ’110 patents, respectively. These allegations are insufficient to meet the pleading standard mandated by *Iqbal* and *Twombly*. Accordingly, Apple’s Eighth through Tenth Claims for Relief should be dismissed. *See* Rule 12(b) (6).

III. CONCLUSION

For all of the reasons stated above, the eForCity Defendants request that the Court grant their motion and dismiss the First through Tenth Claims for Relief asserted

1 against them because Apple's complaint fails to adequately plead those claims under
2 the standards set forth in *Twombly*, *Iqbal* and *View Eng'g*.

3
4 DATED: January 12, 2011

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5
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